



Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure Approval

Processing an Agreement - SA-700

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NOTE

These Procedures were formerly issued by the Office of State and Tribal Programs (STP). Any changes to the procedure will be the responsibility of the FSME Procedure Contact as of October 1, 2006. Copies of FSME procedures will be available through the NRC website.



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I. INTRODUCTION

The Atomic Energy Act (Act) authorizes the Nuclear Regulatory Commission (NRC) to enter Agreements that transfer regulatory authority over certain radioactive materials to the States. The Governor of a State initiates the transfer by requesting an Agreement.

This procedure describes the methods and guidelines for reviewing the request for an Agreement. It also provides guidance to:

- NRC staff on the formal procedural steps for responding to a Governor's request for an Agreement,
- NRC staff on the criteria for evaluating a State's proposed Agreement materials program, and
- State staff on the information to include in a request for an Agreement.

As used in this procedure, the term "State¹" refers to either a State or a Commonwealth. NRC staff should take care to use the proper term in the Agreement, *Federal Register* (FR) Notices, and other official records.

II. OBJECTIVE

- A. Assure that each new Agreement is consistent with the provisions of the Act, Commission policy, NRC Management Directives, and other statutory, regulatory or policy requirements;
- B. Create a predictable and stable regulatory review process to reduce uncertainties that any prospective Agreement State would encounter;
- C. Provide for the effective, efficient, and timely review of the request by a State for an Agreement, or for an amendment to an existing Agreement; and
- D. Provide an orderly transition in the discontinuance of regulatory authority by the NRC and assumption thereof by the State, as well as support the necessary budgetary planning process that accompanies the transition.

¹The Act considers the US Territories and the District of Columbia to be "States" for the purpose of entering into an Agreement.

III. BACKGROUND

A. The Act and Agreements

Section 274 of the Act allows the Commission and a State to enter an Agreement under certain conditions. Under the Agreement, the Commission discontinues regulatory authority over the specified categories of materials. The State concurrently assumes regulatory authority for those materials. A general timeline for entering into an Agreement can be found on page C-1 of the Handbook for Processing an Agreement.

Categories of materials that NRC may transfer are: (a) byproduct materials as defined in Section 11e.(1) through Section 11e.(4) of the Act; (b) source materials as defined by Section 11z of the Act; (c) special nuclear materials (as defined in Section 11aa of the Act) in quantities not sufficient to form a critical mass (as defined in 10 CFR 150.11); (d) the regulation of the land disposal of byproduct, source, or special nuclear material wastes received from other persons; and (e) the evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in the regulations or orders of the Commission. The State may choose to assume regulatory authority over any combination of the categories.

Before the Commission may approve the Agreement, the State must have a program for the control of radiation hazards. The program must be adequate to protect public health and safety with respect to the categories of materials specified in the Agreement. It must also be compatible with the Commission's program for the regulation of the materials. To distinguish this program from other radiation control activities of the State, we call it the "Agreement materials program."

The Governor must certify that the State has the required program and desires to assume the regulatory authority. A comprehensive description of the Agreement materials program should accompany the certification. The certification and description together make up the request for an Agreement. The information in the description must enable the Commission to find the State Agreement materials program adequate and compatible.

B. The Agreement Materials Program

An Agreement materials program has two basic components. The first component is a set of laws and regulations that provides the program's framework. In accord with Commission policy, the term "regulations" may include other forms of generic legally binding requirements. These alternate requirements may include license conditions, orders, or any other acceptable alternative as authorized by State law.

The second component is an effective organizational and administrative structure to execute and enforce the laws and regulations. The administrative structure includes implementing and operating procedures, and guidance for licensees and the program staff.

The organizational structure may be a single State agency, a part of an agency, or portions of two or more agencies. In this procedure, the term "Agreement materials program" includes all State organizational units with regulatory responsibility over materials specified in the Agreement.

C. NRC Staff Actions

The NRC staff evaluates the State's Agreement materials program as described in the request for an Agreement. Simultaneously, it prepares a written assessment of the program. The assessment provides the basis for a finding by the Commission that the program is adequate and compatible. The assessment should show that the program satisfies the Commission policy statement *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, (46 FR 7540; January 23, 1981), as amended on July 16, 1981 (46 FR 36969), and July 21, 1983 (48 FR 33376). We refer to this Commission policy statement as the "criteria policy statement."

The assessment should also give NRC confidence that if the State implements the program as presented, a review of the program pursuant to NRC Management Directive (MD) 5.6, *Integrated Materials Performance Evaluation Program* (IMPEP), will find the State program satisfactory for all applicable indicators.

IV. ROLES AND RESPONSIBILITIES²

- A. The Director, Office of Federal and State Materials and Environmental Management Programs (FSME), is responsible for the Agency's review of a request for an Agreement. The Director determines when the request satisfies the criteria policy statement, and recommends Commission approval of the request.
- B. The Director of the Division of Materials Safety and State Agreements (DMSSA) assigns a Project Manager (PM) for the review of the Agreement request. The PM is the primary NRC staff contact for the State during the review. Finally, the PM is the review team leader and should qualify as an IMPEP team leader.
- C. The review team is responsible for conducting the staff evaluation of the request according to this procedure. A team normally consists of the PM, the assigned staff contacts from other NRC offices,³ and other FSME staff as assigned. The principal reviewers for licensing, inspection, staffing, and incidents and allegations should meet the IMPEP qualification requirements (NRC MD 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*).
- D. The Regional State Agreements Officer (RSAO) is usually the lead NRC contact for a State before it submits a letter of intent. After the State submits a letter of intent, the PM assumes lead responsibility. However, the RSAO usually continues to coordinate contacts between the State and the Region licensing and inspection staffs. The Regional State Liaison Officer (RSLO) may serve as backup to the RSAO. The RSAO and RSLO should keep the PM informed of these contacts.
- E. The Region and FSME are responsible for transferring NRC licensee files to the State (NRC MD 3.53, *NRC Records Management Program*). The PM should be kept informed of these activities.

² As of October 1, 2006, NRC reorganized its nuclear materials and Agreement State programs into two new program offices. The newly created Office of Federal and State Materials and Environmental Management Programs (FSME) is comprised of the former Office of State and Tribal Programs and two technical divisions from the Office of Nuclear Material Safety and Safeguards.

³Office of General Counsel, Office of Nuclear Security and Incident Response, the affected Region, and other NRC offices if necessary.

V. GUIDANCE

For detailed guidance on reviewing the request, including scheduling and documentation requirements, see the *Handbook for Processing an Agreement* (Handbook Appendix C). Handbook Appendix C contains samples of letters and documents based on a previous Agreement request review.

A. Governor's Letter of Intent (Handbook Section 3.3 and Appendix C)

The Governor should send a letter to the Chairman declaring the State's intent to seek an Agreement. The letter should indicate a commitment of State resources to seeking an Agreement. Based on this commitment, NRC plans for the review and commits its resources to working with the State on completion of an Agreement.

B. Preparing a Request for an Agreement

When preparing a request for an Agreement, the State should consider the guidance in this procedure and handbook. The program description should address the program elements listed in Handbook Section 4.0. For each program element, the State should provide information for each category of materials requested in the Agreement.

C. Draft Request for an Agreement (Handbook Section 3.4)

1. The Director of the State Agreement materials program (State program Director) should submit a draft of the State's request for an Agreement. The draft request should contain a draft letter of certification, and program description information for all applicable elements of the Agreement materials program. It should also contain draft text for the proposed Agreement (NRC MD 5.8, *Proposed Section 274b Agreements With States*).
2. The State program Director should alert the PM or the Division Director, DMSSA, at least two months before submitting the draft. The Director, FSME, should then ask the Offices (identified in Section IV.C of this procedure) to assign staff level contacts for the review team.
3. The team reviews the draft request for completeness. To be complete, the program description information must address all applicable program elements. It must also contain sufficient information to permit staff to conduct a detailed review of the application. Printed and photocopied

documents must be legible. Information in electronic form must be readable by the agency computer resources.

4. The team prepares a letter to the State program Director to document the results of the completeness review (sample in Handbook Appendix C). The Director, FSME, signs the letter following Office concurrence.
5. The PM, RSAO, Division Director (DMSSA) or designee, and the State program Director should schedule regular telephone conference calls on the progress of the review (handbook Section 3.4.4). Review team members and other NRC staff may participate. Meetings should supplement the calls as needed.
6. The State should address the Agency's comments by making changes in the formal request. The State program Director should not submit a second draft, or changes to the draft, unless coordinated with the Division Director, DMSSA. When the changes to the formal request are completed, the Governor should sign and submit the formal request to the Chairman.

D. Formal Request for an Agreement (Handbook Section 3.5)

1. The State program Director should alert the PM two weeks before the Governor submits the formal request. The PM prepares a letter for signature by the Chairman acknowledging receipt of the request (sample in Handbook Appendix C).
2. The review team conducts a detailed evaluation of the formal request following the procedures and criteria in Handbook Section 4.0. If the State did not submit a draft request, assemble a review team to conduct a detailed review of the request.
3. If the team identifies deficiencies in the formal request, it prepares a letter to the State program Director providing comments. Following Office concurrence, the Director, FSME, signs the letter.
4. The State should address the comments by making revisions to the formal request. Send the revisions to the Secretary of the Commission, with a copy to the Director, FSME.

- E. Work Completed by the Review Team in Parallel with the Review of the Formal Request
1. The team prepares a draft staff assessment addressing individually each criterion in the criteria policy statement (sample in Handbook Appendix C).
 2. The team prepares a *FR* Notice that announces the proposed Agreement and briefly describes the State's Agreement materials program. Include a summary of the draft staff assessment in the notice. The *FR* notice should also discuss any unique features of the proposed Agreement. Attach the text of the proposed Agreement, with a proposed effective date. The Director, FSME, usually signs the *FR* notice. A sample notice is in Handbook Appendix C.
 3. The Office of Public Affairs, in coordination with the PM, prepares a draft press release (sample in Handbook Appendix C). The press release announces the publication of the proposed Agreement in the *FR*.
 4. In coordination with the Office of Congressional Affairs, the PM prepares draft Congressional letters (sample in Handbook Appendix C). The letters notify NRC's Oversight Committees and the State's delegation of the publication of the proposed Agreement.
 5. The team prepares a Commission paper (sample in Handbook Appendix C).
 - a. The paper should state that staff intends, unless the Commission directs otherwise, to forward the *FR* Notice for publication after the Commission approves the publication.
 - b. The paper must include, as attachments:
 - (1) the draft staff assessment,
 - (2) the proposed *FR* notice (including the proposed Agreement and summary of the draft staff assessment).
 - c. The paper must also include, as background:
 - (1) the draft Congressional letters,
 - (2) the draft press release, and

(3) the Project Schedule for processing, signing, and implementing the Agreement (Handbook Section 3.4.1).

6. The PM prepares letters (samples in Handbook Appendix C) to notify interested Federal agencies of the *FR* notice. The Agreement and Non-Agreement States are notified by an announcement in an All-States letter.

F. Publication of the Proposed Agreement

When the formal request satisfies the criteria policy statement, the team completes the Commission paper. The PM prepares a memo (sample in Handbook Appendix C) from the Division Director, DMSSA, transmitting the paper to the other Offices for concurrence.

1. Following Office concurrence, the Director, FSME, forwards the paper to the EDO for signature and transmittal to the Commission.
2. After the Commission approves the staff recommendations, the Office of the Secretary (SECY) will issue a Staff Requirements Memorandum (SRM). When the requirements of the SRM are satisfied, the Director, FSME, signs the *FR* notice.
3. The Congressional letters accompany the notice. The FSME secretaries will incorporate changes from the SRM, if any, and enclose a pre-publication copy of the *FR* notice. FSME will forward the letters to the Office of Congressional Affairs.
4. Upon publication, the PM attaches a copy of the *FR* notice to the letters notifying the Agreement States and the interested Federal agencies. The PM informs the Office of Public Affairs of the publication.

G. End of the public comment period

When the public comment period closes, the PM is responsible for, with help from the review team as is needed, preparing an analysis of the comments. The PM also prepares a paper seeking Commission action on the proposed Agreement (sample in Handbook Appendix C). The PM prepares the final staff assessment, considering the public comments.

1. Attachments to the paper are:
 - a. final text of the proposed Agreement;
 - b. a draft *FR* notice announcing the approval and signing of the Agreement;
 - c. the final staff assessment;
 - d. the staff's analysis of the public comments; and
 - e. a completed copy of the General Accounting Office form providing the notifications required under the Congressional Review Act (Formerly SBREFA). This form is available at the GAO website.

2. Include, as background to the paper:
 - a. proposed letters to NRC's Congressional Oversight Committees and the State's Congressional delegation announcing the approval and signing of the Agreement; and
 - b. a draft press release announcing the Agreement.

Sample letters and press releases are in Handbook Appendix C.

3. The paper must contain brief discussions of:
 - a. staff's consideration, analysis and resolution of public comments;
 - b. outstanding orders, Confirmatory Action Letters, and 2.206 petitions against licensees that will transfer;
 - c. staff coordination to resolve incomplete escalated enforcement actions. The discussion should indicate we informed the State if NRC will retain jurisdiction for violations that occurred at a licensed facility while under NRC jurisdiction. OGC has ruled that NRC has the authority under Section 234 of the Act to issue a Notice of Violation and Civil Penalty Assessment to transferred licensees. However, NRC does not have authority to require corrective actions after the Agreement is effective;

- d. the status of any complex site or other sites in decommissioning. The discussion should indicate how the State was advised to notify NRC when it terminates the license of a complex site. The notification from the State should indicate whether the site was released for unrestricted use as defined by the State. The decommissioning status of complex sites transferred to the State will be reviewed as part of NRC's "Integrated Materials Performance Evaluation Program;"
 - e. how information was provided to the State regarding previously licensed sites;
 - f. allegations and investigations in progress, but should give no details; and
 - g. the NRC resources that staff anticipates devoting to facilities in the State with the Agreement in effect.
4. The NRC and State staffs agree on the effective date for the Agreement. The PM inserts the date into the Agreement text.
5. The Governor has the choice of signing the Agreement at a formal ceremony or signing by correspondence. The PM consults with the State program Director to determine the Governor's choice. The PM also determines the format of the Governor's signature block, and if the State wishes to add a seal.
- a. If the Chairman and Governor will hold a formal signing ceremony, the date, time and place of the ceremony must be arranged. The PM coordinates with the State staff and, through the EDO, with the Chairman's office.
 - b. If the Agreement is to be signed by correspondence, the location at which the Chairman signs is Rockville, Maryland. The location at which the Governor signs is the State capitol, unless the State specifies another location.
 - c. If the Agreement is to be signed by correspondence, the PM asks the State program Director to provide instructions for delivery of the Agreement to the Governor.

- H. Commission approval of the Agreement
1. The PM assembles the Commission paper and attachments for Office concurrence.
 2. The Director, FSME, forwards the Commission paper to the EDO following Office concurrence.
 3. When the Commission approves the Agreement:
 - a. The PM prepares three official copies of the Agreement for signature, inserting the date of Commission approval (the date of the SRM) into the Agreement.
 - b. The Division Director, DMSSA, forwards the Congressional letters, and three copies of the Congressional Review Act form, to the Office of Congressional Affairs. Address the forms by filling the appropriate box at the top. Attach a copy of the draft *FR* notice to each form.
- I. Signing of the Agreement
1. If the Chairman and Governor will sign the Agreement at a formal ceremony:
 - a. The PM places the copies of the Agreement into individual binders.
 - b. The PM coordinates with SECY to place the NRC seal on each copy before the ceremony.
 - c. After signing, the Governor receives one copy of the Agreement. The PM takes the other two.
 2. If the Agreement is signed by correspondence:
 - a. The PM coordinates with SECY to place the NRC seal on each copy of the Agreement.
 - b. The PM coordinates with EDO and the Chairman's office to arrange for the Chairman to sign all three copies of the Agreement.

c. The PM sends all three copies of the Agreement to the State according to the State instructions requested in Section V.G.5.c of this procedure. After the Governor signs the Agreement, the State retains one copy and returns the other two to the Director, FSME.

3. The PM delivers one copy of the signed Agreement to SECY. FSME retains the other copy in the Agreements file.

J. Implementation of the Agreement

1. The Division Director, DMSSA, forwards the *FR* notice, as approved in the SRM, to the Rules and Directives Branch of the Office of Administration. Section 274e.(2) of the Act requires publication of the *FR* notice within 30 days after the Agreement is signed.

2. The Region and FSME coordinate with the State on transferring license files to the State (NRC MD 3.53). The RSAO should advise the PM of the plans for, and the progress of, the transfer.

3. The PM alerts the Office of Public Affairs to issue the press release announcing the effective Agreement.

4. The PM prepares letters announcing the effective date of the Agreement. Letters go to interested Federal agencies, and the affected NRC material licensees are notified by the appropriate region. The Agreement and Non-Agreement States are notified in an All-States letter. The Division Director, DMSSA, signs the letters. The PM provides the new Agreement State program Director copies of the announcements.

K. After the Agreement is effective

1. Approximately nine months after the Agreement becomes effective, a meeting is set up with the State Agreement materials program management. The orientation meeting is to discuss the State's implementation of the Agreement materials program. (FSME Procedure SA-118, *Orientation Meeting for New Agreement States*).

2. Approximately 18 months after the Agreement becomes effective, the first IMPEP review is conducted. (NRC MD 5.6)

- a. The first IMPEP review evaluates the initial performance of the State program.
- b. Normally, the first review is not scheduled for earlier than approximately 18 months after the Agreement becomes effective. If scheduled earlier, the State may not have completed enough regulatory actions to support an IMPEP finding.

VI. APPENDICES

Handbook for Processing an Agreement

VII. REFERENCES

1. Sections 11 and 274 of the Atomic Energy Act of 1954, as amended.
2. Commission policy statement *Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement*, (46 FR 7540; January 23, 1981), as amended on July 16, 1981 (46 FR 36969), and July 21, 1983 (48 FR 33376).
3. NRC Management Directive 3.53, *NRC Records Management Program*, June 15, 1995.
4. NRC Management Directive 5.6, *Integrated Materials Performance Evaluation Program (IMPEP)*, November 25, 1997.
5. NRC Management Directive 5.8, *Proposed 274b Agreements With States*, September 9, 2004.
6. NRC Management Directive 5.10, *Formal Qualifications for Integrated Materials Performance Evaluation Program (IMPEP) Team Members*, January 5, 1999.
7. FSME Procedure SA-118, *Orientation Meeting for New Agreement States*, March 9, 2005.